

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN ROBINETT, et al.,

Plaintiffs,

v.

OPUS BANK, et al.,

Defendants.

CASE NO. C12-1755 MJP

ORDER ON MOTION FOR
VOLUNTARY DISMISSAL OF
COUNTERCLAIMS AND THIRD
PARTY COMPLAINT

The Court has received and reviewed Defendants' Motion for Voluntary Dismissal of Counterclaims and Third Party Complaint (Dkt. No. 63), Plaintiffs' Response (Dkt. No. 65) and Defendants' Reply (Dkt. No. 66).

Plaintiffs oppose the motion because it would result in "piecemeal litigation." Defendant is willing to proceed forward to the merits "[i]f the Court has no concerns about standing or diversity." Reply, p. 3.

The Court has concerns. Based on Defendant's representations, it is apparent that the Court had no subject matter jurisdiction over Opus Banks' counterclaims at the time they were filed. This is a non-waivable defect: "If the court determines at any time that it lacks subject-

1 matter jurisdiction, the court must dismiss the action.” FRCP 12(h). This is not an optional or
2 discretionary exercise:

3 [F]ederal courts have an independent obligation to ensure that they do not exceed the
4 scope of their jurisdiction, and therefore they must... decide jurisdictional questions that
the parties either overlook or elect not to press.”

5 Henderson ex rel. Henderson v. Shinseki, 131 S.Ct. 1197, 1202 (2011).

6 Therefore, the Court rules as follows:

7 IT IS ORDERED that Opus Bank’s Counterclaims and Third Party Complaint are hereby
8 DISMISSED without prejudice.

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10 The clerk is ordered to provide copies of this order to all counsel.

11 Dated this 5th day of November, 2013.

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14 Marsha J. Pechman
United States District Judge
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